

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14444 of 2015

Amrendra Kumar son of late Ram Narayan Sharma Resident of Mohalla-
Sahdullapur ,P.s Lalganj, District Vaishali.

... .. Petitioner/s

Versus

1. The Chairman Railway Board
2. G.M. East Central Railway ,Hajipur.
3. Principal Chief Engineer, electrical ,East central Railway ,Hajipur.
4. Divisional Railway Manager E.C. Railway.
5. Senior D.E.E. T.R.D. E.C Railway, Danapur ,Patna.
6. Senior Selection Engineer, T.R.D. Arrah.
7. Senior Sectional Engineer T.R.D. BakhtiyarpurPatna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Raj Dular Sah, Adv.
For the Respondent/s : Mr. Anshay Bahadur Mathus, CGC

CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY
ORAL ORDER

8 04-10-2023 Heard the learned counsels for the parties.

The present writ petition has been filed for the following
reliefs;

“(a) For issuance of an appropriate writ/writs direction/directions commanding the Respondents authorities for quashing the order dated 18.05.2015 passed by Senior DEE/TRD/ECR/DNR (Respondent No. 05) whereby and where under the claim of Rs. 3,36480/- of the petitioner has been rejected in connection with Agreement No. TRD/DNR/ OT/ 10/2004-05 dated 23-08-2005.

A copy of order dated 18-05- 2015 is annexed herewith and marked as



Annexure-1 to this application .

(b) For issuance of an appropriate writ/writs, direction /directions Respondents authorities to pay Rs. 3,36,480/- with interest of the petitioner against the work under contract in connection with Agreement No.- TRD/DNR /OT / 10/2004-05 dated 23-08-05.

(c) For issuance of an appropriate writ/writs, direction/directions, commanding the Respondents authorities for any other relief/reliefs which the Petitioner entitled.”

3. Learned counsel for the petitioner has stated that the petitioner has undertaken works pursuant to the agreement entered between the parties. Though the petitioner has completed the work entrusted and submitted the final bills, the authorities for reasons best known are not paying the amounts due to the petitioner. Further, it is stated that as per the work completion certificates issued by the authorities, the petitioner has completed the work (Annexure-4A) to the satisfaction of the authorities but they are not paying the amounts due to the petitioner. Therefore, learned counsel for the petitioner has prayed this Hon'ble Court to allow the present writ petition and direct the authorities to pay the amounts due to the petitioner.

4. *Per Contra*, learned counsel appearing on behalf of the respondents has vehemently opposed the very maintainability of the present writ petition. Learned counsel has stated that as per



the terms and conditions of the agreement there is an arbitration clause and, therefore, the present writ petition is not maintainable. Learned counsel has stated that the petitioner instead of availing the remedy of arbitration has approached this Hon'ble Court. Further, it is stated by the counsel for the respondents that the work completion certificates produced by the petitioner have not been issued by a competent or authorised person and the same are bogus certificates fabricated for the purpose of this case. Learned counsel has stated that the disputed questions of fact cannot be adjudicated by this Hon'ble Court under Article 226 of the Constitution of India and, therefore, prayed this Court to dismiss the present writ petition.

5. A perusal of the agreement entered by the parties reveals that as per Clause 13.5A, arbitration is provided under the said clause and in case there is any dispute with regard to the agreement, the parties are free to invoke the arbitration clause. Clause 13.5A of the agreement reads as under;

“The earnest money including the amount taken as security deposit for the due performance of the stipulation to keep the offer open till the date specified in the tender will be refunded to the unsuccessful tenderer within a reasonable time. The earnest money deposited by the successful tenderer will be retained towards the security



deposit for the due and faith full fulfillment of the contract but shall be forfeited if the contractor fails to execute the agreement bond within 14 days of

(a) Matters in question of dispute or difference to be arbitration upon shall be referred for decision to

(i) A sole Arbitrator who shall be the Chief Elect Engineer/EC Rly. HJP or a person nominated by him in that behalf in cases where the claim in question is below Rs. 50000/- and in cases where the issued involved are not of a complained nature. The Chief Elect. Engineer shall be the self judge to decide whether or not the issued involved are of a complicated nature.

(ii) The arbitrators, who shall be Gazetted Rly, Officers of equal, status to be appointed in the manner laid down in subpara-

(b) Below for all claims of Rs. 50000/- and above, and for the issues involved are of a complicated nature. The Chief Elect. Engineer shall be the sold judge to decide whether the issue are of a complicated nature of not. In the event of the two arbitrators being divided in their opinions the matter under dispute will be referred to on spire to be applied in the matter laid down in sub Para (b) for his decision.

(b) For the purpose of F-pointing two arbitrators as referred to in sub-para (a), (ii) above, the Sly. Will send a panel of more than



three named of officers of the appropriate status of one or more departments of the Rly. To the contractors who will be asked to suggest a panel of three names out of the list so sent by the Rly. The Chief Electrical Engineer will appoint one Arbitrator out of this panel of the contractors and then appoint second arbitrator of equal status as the Rly's nominee either from the panel or from outside the panel ensuring that the one of the two arbitrators shall nominate an umpire to whom case will be referred in the event of any difference between the two arbitrators.

(c) The arbitrator or arbitrators of the impure shall have power to call for such evidence by way of office witnesses or otherwise as the arbitrator or arbitrators or umpire shall think proper, and it shall be the duty of the parties here to do cause to be done all such things may be necessary to enable the arbitrators or umpire to make the award without any delay.

(d) It will be no objection that the person appointed as arbitrator/arbitrators, Umpire are Govt. servant they have expressed view on all or any of the matters in dispute.”

6. Having regard to the above arbitration clause, this Court is of the opinion that the ends of justice would be met if the petitioner is directed to approach the Chief Electrical Engineer of the respondent Railway within a period of four weeks from the date of receipt of a copy of this order. On such



application being made, the arbitrator shall pass necessary orders strictly in accordance with law. In case the arbitrator comes to the decision that the amounts are liable to be paid to the petitioner, he shall pass a reasoned order and the authorities are directed to pay the same. The entire exercise shall be completed by arbitrator as expeditiously as possible preferably within a period of four months from the date of receipt of the arbitration application made by the petitioner. It is needless to mention that before passing any order, the parties shall be given an opportunity of hearing. Any order passed shall be communicated to all the parties.

7. With the above direction, the present writ petition stands disposed off.

(A. Abhishek Reddy , J)

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