

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6037 of 2023

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Kalanand Mandal, Son of Late Thakur Mandal, Director of Larks Buildcon India Pvt. Ltd, resident of City Heart Apartment, Flat No-302, Budh Marg, PS-Kotwali, District-Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through its Secretary, Road Construction Department, Government of Bihar, Patna.
2. The Engineer-in-Chief, Rural Works Department, Bihar, Patna.
3. The Chief Engineer, Rural Works Department, Patna.
4. The Superintending Engineer, Rural Works Department, Begusarai
5. The Executive Engineer, Rural Works Department, Works Division, Manjhaul Bakhri, Begusarai.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Parashuram Singh, Advocate.
For the Respondent/s : Mr. Rajeshwar Singh (GA- 10)

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

9 04-10-2023 Heard learned counsel for the parties.

2. The present Writ Petition has been filled for the following reliefs:-

“(i)..... for issuance of an appropriate writ/order/direction in the nature of mandamus to command the respondents to pay the admitted dues amounting to Rs. 10,59,826/- (ten lacks fifty nine thousand eight hundred twenty six rupees) with bank rate interest to the petitioner.

(ii) Respondents concerned be directed to look into the petitioner's grievances regarding non-payment of admitted dues to the petitioner even after oral and written demand made by the petitioner to the respondents.

(iii) The respondents' act of not paying admitted



dues to the petitioner be declared as highly arbitrary, illegal and an act played as a dirty gimmick only to defeat the genuine and legal right of the petitioner.

(iv) Erring respondents be sternly dealt with for their misdeed, misdemeanor and defying act done on extraneous consideration”.

3. Having regard to the fact that there is mechanism for settlement of dispute as per Clause 6 of the agreement entered between the parties dated 16th June, 2017 which reads as under:-

6.1.1. If any dispute or difference of any kind what as-ever shall arises in connection with or arising out of this Contract or the execution of Works or maintenance of the works there under, whether before its commencement or during the progress of work or after the termination, abandonment or breach of the Contract, it shall be referred to Empowered Standing Committee which will consist of

(I). One official member, Chairman of the Standing Empowered Committee, not below the rank of Additional Secretary to the State Government;

(II) One official member not below the rank of Chief Engineer's, and

(III) One non-official member who will be technical expert of Chief Engineer's level selected by the Contractor from a panel of three persons given to him by the Employer

Such decision in respect of every matter, so referred shall subject to review as hereinafter provided, be final and binding upon the contractor.

In case, the works is already in



progress, the contractor shall proceed with the execution of the works, including maintenance thereof, pending receipts of the decision of the competent authority within 45 days of arising the dispute or difference" as aforesaid with all the diligence.

6.1.2 The Contractor and the Employer will be entitled to present their case in writing duly supported by documents. If so requested the Standing Empowered Committee within 90 days of decision of the competent authority" may allow one opportunity to the Contractor and the Employer for oral arguments for a specified period. The Empowered Committee shall give its decision within a period of 90 (ninety days) from the date of appeal, failing which the contractor can approach the appropriate court for the resolution of the dispute.

6.1.3. The decision of the Standing Empowered Committee will be binding on the Employer for payment of claims up to 5% (five percent) of the Initial Contract Price. The Contractor can accept and receive payment after signing as "in full and final settlement of all claims. If he does not accept the decision, he is not barred from approaching the courts. Similarly, if the Employer does not accept the decision of the Standing Empowered Committee above the limit of 5% (five percent) of the Initial Contract Price, he will be free to approach the courts applicable under the law.

6.2 Arbitration

6.2.1 In view of the provision of the clause 6.1 on Dispute Redressal System, it is the condition of the Contract that there will be no arbitration for the settlement of any dispute between the parties.

4. The petitioner is directed to approach the Empowered Standing Committee within a period of four weeks from today ventilating his grievance. On such representation



being made the Empowered Standing Committee shall consider the claims made by the petitioner and pass necessary orders for payment of the amounts due to the petitioner. In case, the authorities are of the opinion that the claim made by the petitioner are genuine, they shall see to it that the amounts are released. In case, the Empowered Standing Committee comes to the conclusion that the claims made by the petitioner are not genuine, they shall pass a reasoned order giving reasons for the rejection. The entire exercise shall be completed as expeditiously as possible preferably within a period of four months from the date of the representation made by the petitioner.

5. It is needless to mention that before passing any order the petitioner shall be put on notice and given an opportunity of hearing. Any order passed shall be communicated to the party.

6. Accordingly, the present Writ Petition stands disposed off to the extent indicated.

(A. Abhishek Reddy , J)

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