

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8405 of 2016

1. Macro Ranjan Construction Pvt. Ltd. Through its director Usha Complex, Bidupur Bazar (Khilwat), Vaishali (Bihar).
2. Murlidhar Rai Son of Late Deonandan Rai Director of Macro Ranjan Construction Pvt. Ltd. Resident of Village - Pahleja Shahpur Diara, P.S. Sonepur, Dist. - Saran.

.. ... Petitioner/s

Versus

1. East Central Railway, Hajipur through Chief Rail Manager.
2. Chief Rail Manager, East Central Railway, Hajipur.
3. Divisional Rail Manager, Sonepur.
4. Senior Divisional Engineer, Sonepur.
5. Divisional Engineer Special, Sonepur.

... ... Respondent/s

Appearance :

For the Petitioner/s :

For the Respondent/s :

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

Date : 09-05-2023

Matter is of the year 2016.

2. None appears for the respective parties.

3. In the instant petition, petitioners have prayed for the following relief/reliefs:

“That this is an application for issuance of appropriate writ(s) directing the respondents to return total Rs. 1644452 (Sixteen Lakh four thousand four hundred and fifty two) to petitioners which includes Rs. 333000/- deposited as earnest money vide tender notice no. 07/SONPUR/2009 [Item No. 8] for acceptance value 6652420.20/- and Rs. 333000/-



deducted from bill as performance guarantee of construction of community Hall at Hajipur Kaunhara Ghat which was forfeited by respondent No. (5) terminating said tender on 5/12/2013 alleging delay in the construction of said hall and not completed within stipulated time i.e., on 30.08.2012 as well as pay Rs. 378452/- dues bill for escalation in price of material and Rs. 600000 /- earlier dues for the work done till then.”

4. Petitioners were successful bidder insofar as construction of Community Hall at *Hajipur Kaunhara Ghat*. They could not complete the work within the time limit stipulated. In this regard, they had submitted extension application on 13.03.2012 and it was extended up to 30.06.2012. It was also made clear while extending time that in the event of non-completion of work, action would be taken in terms of Clause 62 of General Conditions of Contract. Thereafter, the petitioners could not complete the work before 30.06.2012 and further various correspondence have been made and ultimately resulted in termination of contract with effect from 27.02.2012. In other words, retrospectively the contract was terminated on 05.12.2013 with effect from 27.02.2012. Such retrospective termination of contract is contrary to the communication of the respondent dated 04.07.2012 (Annexure – 6).

5. Further there is no specific notice relating to termination of contract and forfeiting of security deposit or E.M.D. In the



absence of specific notice, insofar as termination of contract, the petitioners have made out a case in the light of Apex Court decision in the case of *UMC Technologies Pvt. Ltd. vs. Food Corporation of India and Another*, reported in (2021) 2 SCC 551.

5. Accordingly, order of termination dated 05.12.2013 stands set aside reserving liberty to the concerned authority to initiate appropriate proceedings after taking note of Apex Court decisions in the case of *UMC Technologies* cited *supra* read with *Isolators and Isolators through its proprietor Mrs. Sandhya Mishra vs. Madhya Pradesh Madhya Kshetra Vidyut Vitran Co. Ltd. and another*, Para – 34, LiveLaw (SC) 330.

6. Further, action shall be taken within a period of four months from the date of receipt of this order. Writ petition stands allowed.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

GAURAV S./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	15.05.2023
Transmission Date	NA

