

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3254 of 2018

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M/s M B L Infrastructures Ltd. Daughter of Anand Kumar Rai, Resident of C-363, Sant Sundar Das Housing Society, Plot No.21, Dwarka, Sector-12, Kakorla, P.S.- Kakoria South West Delhi, New Delhi.

... .. Petitioner/s

Versus

1. The State Of Bihar through its Principal Secretary, Water Resources Development, Bihar, Patna.
2. The Principal Secretary, Water Resources Department, Government of Bihar, Patna.
3. The Engineer-in-Chief, Headquarters, Water Resources Department, Government of Bihar, Patna.
4. The Chief Engineer, Water Resources Department, Siwan.
5. The Superintending Engineer, Saran Canal Division, Chapra.
6. The Executive Engineer, Saran Canal Division, Marhaura.
7. M/s Vaibhav Construction Pvt. Ltd., Saraiya, Ward No.-13, Gopalganj, through its Managing Director.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Y.V. Giri, Sr. Advocate Mr. Brisketu Sharan Pandey, Advocate
For the State	:	Mr. Vikash Kumar, SC 11 Mr. Sriram Krishna, AC to SC 11
For the Respondent No.7&8:		Mr. Arun Kumar, Advocate Mr. Raghubir Chandrayan, Advocate

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

10 11-04-2023

In the instant writ petition, petitioner has prayed for the
following relief(s):-

“i) For issuing writ of certiorari quashing the letter No.34/Marhaura dated 13.01.2018, issued by the Executive Engineer, Saran Canal Division, Marhaura, whereby and whereunder the Contract of petitioner bearing Agreement



No.01-SBD/2014-15 dated 02.03.2015 Group No.7 has been rescinded on totally non-est grounds.

ii) For issuing writ of certiorari quashing the letter No.109 dated 12.01.2018, issued by the Engineer-In-Chief, Water Resources Department, Bihar, Patna, whereby and whereunder the work of petitioner has been allotted to one M/s, Vaibhav Construction Pvt. Ltd. and proposal has been sent for rescinding the agreement of the petitioner in view of report of flying squad.

iii) For issuing of writ in the nature of certiorari quashing the letter dated 11.12.2017 contained in letter No.4 496 and letter dated 27.12.2017 contained in letter No.4737 issued by Engineer-In- Chief, Headquarter, Water Resources Department, Government of Bihar, (for short "impugned notice") whereby and whereunder the petitioner has been asked as to why he should not be blacklisted in terms of Rule 11 (Ka) (ii) of Bihar Contractors Regulation Rules-2007, in view of report of flying squad dated 27.04.2011 wherein certain irregularity have been allegedly found with regard to the work completed by the petitioner.

iv) For issuing of writ in the nature of certiorari quashing ex- parte ex- parte inspection report vide report dated 04.07.2017 (Annexure 10 Series) dated given by flying squad on the basis of inspection carried out almost one year after the foreclosure.

v) For directing upon the respondents not to proceed further in with regard to impugned show cause notice dated 11.12.2017 and 27.12.2017 issued with regard to blacklisting of petitioner until the pendency of the present writ application.

vi) For issuing a writ in the nature of mandamus directing and commanding the respondent authorities to clear the pending dues/ bills along with 18% interest per anum.



vii) For holding that the recession of agreement vide letter No.34/ Marhaura dated 13.01.2018, issued by the Executive Engineer, Saran Canal Division, Marhaura, is bad in law and illegal.

viii) For holding that the respondents cannot rescind the Contract, once Clause 13 of Section 3 of the General Conditions of Contract of the Standard Bidding Document (for short "SBD"), has been invoked by the competent authority for closure of agreement.

ix) For issuance a writ of certiorari quashing thereby the order of allotment (upon asking the respondents to bring the same on record) of remaining part of work of the modified/recasted work contract in relation to 01 SBD/2014-15 dated 02.03.2015 and also a writ of mandamus restraining Respondent No.7 from proceeding with the aforesaid remaining modified/re-casted work contract in relation to 01 SBD/2014-15 dated 02.03.2015 for which otherwise petitioner is entitled to perform and execute like the other contractors who have been allowed remaining restructured work after the foreclosure.

x) For holding that the contract of the petitioner has been rescinded only with a view to accommodate Respondent No.7 in the place of petitioner.

xi) For holding that the respondent state authorities have committed illegality by allowing the remaining remaining modified/re-casted work contract in relation to 01 SBD/2014-15 dated 02.03.2015 for which fresh tender should have been floated in case the petitioner was not found fit for the same.

xii) For directing the respondents to allow the petitioner to proceed with the work on the same terms & conditions as per contract no.01 SBD/2014-15 dated 02.03.2015 like other contractors of 8 packages.

xiii) For any other relief or reliefs for which the petitioners are found entitled in the facts and circumstances of the case."



2. In terms of clause 25 of the agreement, respective parties are required to adjudicate the matter in the arbitration.

Clause 25 of the agreement reads as under:-

“CLAUSE 25: Settlement of Dispute & Arbitration

Except where otherwise provided in the contract all questions and disputes relating to the meaning of the specifications, design, drawings and instructions here-in-before mentioned and as the quality of to workmanship or materials used on the work or as to any other question, claim right matter or thing whatsoever in any way arising out of or relating to the contract, designs, drawings, specifications, estimates, instructions, orders or these conditions or otherwise concerning the works or the execution or failure to execute the same whether arising during the progress of the work or after the cancellation, termination, completion or abandonment thereof shall be dealt with as mentioned hereinafter.

i). If the contractor considered any work demanded of him to be outside the requirements of the contract, or dispute any drawings, record or decision given in writing by the Engineer-in-Chief or any matter in connection with or arising out of the contract or carrying out of the contract or carrying out of the work, to be unacceptable, he shall promptly within 7 days request the Superintending Engineer in writing for written instruction or decision. Thereupon the Superintending Engineer shall give his written instructions or decision within a period of fifteen days from the receipt of the contractor's letter. If the Superintending Engineer fails to give his instructions or decision in writing within the aforesaid period or if the contractor is dissatisfied with the instructions or decision of the Superintending Engineer, the contractor may, within 15 days of the receipt of Superintending Engineer's decision, appeal to the Chief Engineer who shall



afford an opportunity to the contractor to be heard, if the latter so desires, and to offer evidence in support of his appeal. The Chief Engineer shall give his decision within 30 days of receipt of receipt of contractor's appeal. If the contractor is dissatisfied with this decision, the contractor shall within a period of 30 days from receipt of the decision, give notice to the Chief Engineer for appointment of arbitrator failing which the said decision shall be final binding and conclusive and not referable to adjudication by the arbitrator.

ii). Except where the decision has become final, binding and conclusive in terms of Sub para (i) above disputes or difference shall be referred for adjudication through arbitrator appointed by Engineer-in-Chief or the administrative head of the said P.W.D. If the arbitrator so appointed is unable or unwilling to act or resign his appointment or vacates his office due to any reason whatsoever arbitrator shall another be appointed in sole the manner aforesaid. Such person shall be entitled to proceed with the reference from the stage at which it was left by his predecessor.

It is a term of this contract that the party invoking arbitration shall give a list of disputes with amounts claimed in respect of each such dispute along with the notice for appointment of arbitrator and giving reference to the rejection by the Chief Engineer of the appeal.

It is also a term of this contract that no person other than a person appointed by such Engineer-in-Chief or the administrative head of the department as aforesaid should act as arbitrator and if for any reason that is not possible, the matter shall not be referred to arbitrator at all. It is also a term of this contract that if the contractor does not make any demand for appointment of arbitrator in respect of any claims in writing as aforesaid within 45 days of receiving the limitation from the Engineer-in-Charge that the final bill is ready for payment, the claim of the contractor shall be deemed to have been waived and absolutely barred and the



Government shall be discharged and released of all liabilities under the contract of these claims.

The arbitration shall be conducted in accordance with the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) or any statutory modifications or re-enactment thereof and the rules made there under and for the time being in force shall apply to the arbitration proceeding under this clause.

It is also a term of the contract that if any fees are payable to the arbitrator these shall be paid equally by both the parties.

It is also a term of the contract that the arbitrator shall be deemed to have entered on the reference on the date he issues notice to both the parties calling them to submit their statement of claims and counter statement of claims. The venue of the arbitration shall be such place as may be fixed by the arbitrator in his sole discretion. The fees, if any, of the arbitrator shall, if required to be paid before the award is made and published, be paid half and half by each of the parties. The cost of the reference and of the award (including the fees, if any, of the arbitrator) shall be in the discretion of the arbitrator who may direct to any by whom and in what manner such costs or any part thereof shall be paid and fix or settle the amount of costs to be so paid.

All arbitration shall be held at PATNA and at no other place.”

3. Apex Court in the case of ***State of U.P. and Ors. vs Bridge and Roof Company (India) Ltd., (1996) 6 SCC 22*** in which held that disputed facts cannot be adjudicated under Article 226 of Constitution of India. The same principle is reiterated in the case of ***Bhawan Construction Vs., Sardar***



Sarovar Narmada Nigam Ltd., (2021) SCC Online SC 8.

4. Perusal of the records, it is evident that there are certain disputed issues which cannot be adjudicated under Article 226 of the Constitution of India in a writ jurisdiction. Accordingly, writ-petition stands disposed of, reserving liberty to the respective parties to invoke appropriate remedy.

5. Interlocutory Application, if any, also stands disposed of.

6. Interim order granted by this Court merges with the final order in the light of Apex Court decision in the case of ***Kalabharati Advertising Vs. Hemanth Vimal Nath Narichania*** reported in ***(2010) 9 SCC 437***. In other words interim order/direction is not existing in the eye of law.0

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

Himanshu/
Ashish/-

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