IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12542 of 2019

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A2z Infra Engineering Limited (formely known as A2z Maintenance and Engineering Services Limited) having its Registered Office at O-116, First Floor, Shopping Mall, Arjun Marg, DLF City Phase-1, Gurgaon- 122002, Haryana, through its Senior Manager (Projects), Shri Manish Singh, aged about 38 years, S/o Shri Rajendra Prasad Singh, resident of Village- Sanathua, P.O. Jogia, P.S. Risiup, District- Aurangabad, Bihar.

... ... Petitioner/s

Versus

1. The Bihar State Power Holding Company Ltd. 1st Floor, Vidyut Bhawan, Bailey Road, Patna- 800001.
2. Chairman-cum-Managing Director, Bihar State Power Holding Company Ltd. 1st Floor, Vidyut Bhawan, Bailey Road, Patna- 800001.
3. The Managing Director, North Bihar Power Distribution Company Ltd., Vidyut Bhawan, Bailey Road, Patna- 800001.
4. The Chief Engineer (Planning), North Bihar Power Distribution Company Ltd., Vidyut Bhawan Bailey Road, Patna- 800001.
5. The Managing Director, South Bihar Power Distribution Company Ltd., Vidyut Bhawan Bailey Road, Patna- 800001.
6. The Chief Engineer (Planning), South Bihar Power Distribution Company Ltd., Vidyut Bhawan Bailey Road, Patna- 800001.
7. The Finance Controller, Bihar State Power Holding Company Ltd., 1st Floor, Vidyut Bhawan, Bailey Road, Patna- 800001.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ankit Katriar, Advocate

For the Respondent/s : Mr. Anand Kumar Ojha, Advocate
Mr. Ashok Kumar Karn, Advocate
Mr. Abhishek Raj, Advocate

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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 : 17-03-2023

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

> *"1. That this is an application praying for issuance of a writ in the nature of a writ of mandamus or any other appropriate writ / order / direction for directing the respondent authorities to pay a sum of rs. 1,41,80,374/- (along with all admissible statutory interest) to the petitioner-company as the same has been illegally deducted from the petitioner's bill on the misconceived ground of reduction in Excise Duty and Sales Tax, by making assumed calculations without any basis, w.r.t. the subject works. It is, further, prayed for issuance of a consequential writ in the nature of a writ of mandamus or any other appropriate writ or direction commanding the respondent authorities to make payment of the admitted dues of rs. 55,13,682.65/- (along with statutory interest) w.r.t. the Extra Items invoices for Chautarwa and Chhitawani sub-stations."*

Perusal of the records, it is evident that petitioner has alternative remedy before appropriate forum and it is in the form of statute. Para 47 of Purchase order for supply of equipment for completion of 11 number of 33/11 KV Power Stations at *Chautarwa, District – West Champaran* and other various places and Districts reads as under:-

> **47. JURISDICTION OF COURT:** All disputes/claims/counter claims for and/or against the Board arising out of agreement/contracts/orders between the Board and the firm/CONTRACTOR shall be subject to the exclusive jurisdiction of Civil court, Patna only and no other Court or Arbitrator.

In the light of above factual aspects, the present petition is not maintainable in the light of Apex Court's decision in the case of ***Assistant Commissioner (CT) LTU, Kakinada & Others Vs. Glaxo Smith Kline Consumer Health Care Ltd.*** reported in ***(2020) 19 SCC 681,*** wherein Apex Court has specifically taken note of alternative remedy available to the concerned aggrieved person under statute.

Gist of the aforementioned judgment reads as under:-

> *"The SC on May 6, 2020 {Assistant Commissioner (CT) LTU, Kakinada & Ors. v. M/s. Glaxo Smith Kline Consumer Health Care Limited} held that the High Court has wide jurisdiction under Article 226 of the Constitution, does not mean that it can disregard the substantive provisions of a statute and pass orders which can be settled only through a mechanism prescribed by the statute.*
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> *It was further held by the SC Bench, comprising of Justice A.M. Khanwilkar & Justice Dinesh Maheshwari, that even though the High Court can entertain a writ petition against any order or direction passed/ action taken by the State under Article 226 of the Constitution, it ought not to do so as a matter of course when the aggrieved person could have availed of an effective alternative remedy in the manner prescribed by law.*
>
> *The Supreme Court held that, indubitably, the powers of the High Court under Article 226 of the Constitution are wide, but certainly not wider than the plenary powers bestowed on it under Article 142 of the Constitution. It was held that Article 142 is a conglomeration and repository of the entire judicial powers under the Constitution, to do complete justice to the parties.*
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> *The moot question in this lis before the SC was: whether the High Court*

in exercise to writ jurisdiction under Article 226 of the Constitution of India ought to entertain a challenge to the assessment order on the sole ground that the statutory remedy of appeal against that order stood foreclosed by the law of limitation? The SC answered it in negative.

In the present case, the High Court allowed the Writ petition vide the impugned judgment and order on the ground that the statutory remedy had become ineffective for the respondent (writ petitioner) due to expiry of 60 days from the date of service of the assessment order. It was reasoned by the HC while allowing the writ petition that inasmuch as, the appellate authority had no jurisdiction to condone the delay after expiry of 60 days, despite the reason mentioned by the respondent of an extraordinary situation due to the act of commission and omission of its employee who was in charge of the tax matters, forcing the management to suspend him and initiate disciplinary proceedings against him. The SC found the said reasoning of the HC for entertaining writ petition patently erroneous and against the settled law.

The SC relied upon ***Oil and Natural Gas Corporation Limited VS. Gujarat Energy Transmission Corporation Limited & Ors.,*** *(2017) 5 SCC 42, in which it concluded that Section 5 of the Limitation Act, 1963 cannot be invoked by the Court for maintaining an appeal beyond maximum prescribed period in Section 125 of the Electricity Act. To put it in a different way, it was held by the SC in that case, the prescription of limitation when the statute commands that the SC may condone the further delay not beyond 60 days, it would come within the ambit and sweep of the provisions and policy of legislation. It was held that it is equivalent to Section 3 of the Limitation Act. Therefore, it was held therein that it is uncondonable and it cannot be condoned taking recourse to Article 142 of the Constitution."*

In the light of these facts and circumstances, the present petition is not maintainable. Accordingly, present writ petition stands dismissed, reserving liberty to petitioner to invoke remedy before appropriate forum. In the event of invoking appropriate remedy, the concerned authority/Court is hereby directed to take note of Section 14 of Limitation act, 1963 for the purpose of condonation of delay in entertaining litigation.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

shoaib/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	27.03.2023.
Transmission Date	NA