

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12268 of 2018

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M/s R. S. Panday And Co. Through Its Managing Director, Mr. Dinesh Panday S/o Late Ram Surat Panday, Resident of Majhulia Road, P.S.- Kaji Mohammadpur, District- Muzaffarpur.

... .. Petitioner/s

Versus

1. The Union Of India and Ors
2. The Chief Engineer EZ-II, Central Public Works Department, Pant Bhawan, Patna.
3. The Project Manager, PMGSY, Project Circle, Central Public Works Department, Pant Bhawan, Patna.
4. The Executive Engineer, PMGSY Project Division, Muzaffarpur, PCG II, C.P.W.D., Patna.
5. The Executive Engineer, PMGSY, Project Division, Central Public Works Department, Madhubani.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Prabhakar Nath Rai, Advocate
For the Respondent/s	:	Mr. K.N.Singh, ASG
		Mr. Rakesh Kr. Sinha, CGC

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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)

8 08-05-2023 Mr. V.N.Vibek, Chief Engineer (EZ-II), Central Public Works Department, Patna Bhawan, Patna is present in the Court.

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

“(i) For issuance of an appropriate writ to quash the letter no. 12(3)/CE(EZ-II)/PMGSY/CPWD/2017/366 dated 26.05.2014 issued by Chief Engineer



(EZ-II) Central Public Works Department, Patna where by the decision of the Empowered Standing Committee was communicated to the petitioner which is in contrary to in terms of the order dated 10.12.2013 passed in CWJC No. 8160 of 2011 contained in Annexure-6.

(ii) For issuance of an appropriate writ commanding the respondents to consider the representation of the petitioner and constitute an appellate body in terms of order dated 10.12.2013 passed in CWJC No. 8160/2011.

(iii) For any other relief or reliefs for which the petitioner is entitled under the law as well as on the facts of the case.”

3. The petitioner is before this Court on third occasion. The petitioner's disputed issue is required to be adjudicated by the competent authority in terms of Clause 24 of SBD for PMGSY. Whereas, Appellate Authority - Standing Empowered Committee decided the petitioner's dispute. Standing Empowered Committee is only Appellate Authority in terms of SBD for PMGSY.

4. On the other hand, under the contract data general conditions of contract, Clause 15A relates to competent authority defined as Standing Empowered Committee (Clause 24.1 was referred). Reading of Clause 24 read with Clause 15, it is contradictory in identifying competent authority and appellate



authority. In other words, competent authority has not been defined other than saying that all the disputes are to be referred to Standing Empowered Committee. Even though appeal is provided before the Standing Empowered Committee under Clause 24.2. It is necessary to re-produce Clause 24 and Clause 15:-

“ 24. Dispute Redressal System

24.1 If any dispute or difference of any kind what-so-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, Works or after the termination, abandonment or breach of the Contract, it shall, in the first instance, be referred for settlement to the competent authority, described along with their powers in the Contract Data, above the rank of the Engineer. The competent authority shall, within a period of forty-five days after being requested in writing by the Contractor to do so, convey his decision to the Contractor. 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 receipt of the decision of the competent authority as aforesaid, with all due diligence.



24.2 Either party will have the right of appeal, against the decision of the competent authority, to the Standing Empowered Committee if the amount appealed against exceeds rupees one lakh.

24.3 The composition of the Empowered Standing Committee will be:

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; 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.

24.4 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 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 ninety days, from the date of appeal, failing which the contractor can approach the appropriate court for the resolution of the dispute.

[Underline Supplied]



24.5 The decision of the Standing Empowered Committee will be binding on the Employer for payment of claims up to 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 five percent of the Initial Contract Price, he will be free to approach the courts applicable under the law.

15. (a) Competent authorities are: All the disputes are to be referred to standing empowered committee.

[Underline Supplied]

5. Reading of the aforementioned provision it is evident that identification of competent authority and appellate authority are overlapping. In other words, the petitioner's dispute has been decided by Standing Empowered Committee whereby petitioner has been denied appeal under Clause 24.2, therefore, the Chief Engineer is hereby directed to decide the petitioner's dispute initially after giving ample opportunity of hearing. Thereafter, proceed to pass order as to whether the petitioner is entitled to any relief before the Chief Engineer or not?



6. In this regard, a detailed speaking order shall be passed and communicated to the petitioner, since in the event any adverse order is passed against the petitioner, the petitioner has remedy of appeal before the Standing Empowered Committee under Clause 24.2.

7. The above exercise shall be completed by the Chief Engineer within a period of two months from the date of receipt of application/request of the petitioner claiming certain reliefs. The petitioner is at liberty to file additional claim, if any, within a period of three weeks' from today. On receipt of additional claim, if any, on behalf of the petitioner, Chief Engineer is hereby directed to take note of additional material information and proceed to pass order.

8. Accordingly, the Annexure-10 dated 26.05.2014 order of the Standing Empowered Committee stands set aside, since it is contrary to Clause 24 read with Clause 15 of the SBD for PMGSY.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

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