

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1191 of 2016

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M/s Sunil Engicon Pvt. Ltd. 12, Pather, P.O. - Samastipur, P.S & District –
Samastipur.

... .. Petitioner/s

Versus

1. General Manager, East Central Railway, P.O District - Hajipur
2. Divisional Engineer, East Central Railway, Samastipur, for and on behalf of
President of Union of India.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Abhay Shankar Singh, Advocate Mr. Barun Kumar Singh, Advocate
For the Respondent/s	:	Mr. Pradeep Kumar, Sr. Advocate Mr. Ratnesh Kumar, CGC

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

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

6 27-06-2023 In the instant petition, petitioner has prayed for the
following relief(s):-

*“1. That by this writ application, the
petitioner Challenges Malafide on behalf of the
Respondents played on petitioner by disallowing
rightful claim of the petitioner qua lis before
this Hon’ble Court. That the act of the
respondents whereby rightful claim of the
petitioner is rejected is illegal, arbitrary,
malafide, Unreasonable, violation of its own
provision of standard GCC of the Railway
pertaining to similar contracts applicable on the
petitioner and other similarly placed
contractors.”*

2. Matter was heard for some time on 04.05.2023 and
the following order was passed:-



“Heard learned counsels for the parties.

Grievance of the petitioner is on the score that respondents have discriminated the petitioner insofar as price escalation is concerned. In this regard, in para 10, the petitioner has specifically urged that there is discrimination.

On the other hand, perusal of para 15 of the counter affidavit, it merely states that ‘as per clause of each agreement payment is being made to the agency’. In support of such contention it is necessary to peruse both the agreements of the petitioner as well as other contractors’ names stated in para 10.

Re-list this matter on 18.05.2023.”

3. In response to the aforementioned order, respondents have filed supplementary counter affidavit and in para 5 & 6 they have stated as under:-

“5. That from perusal of the aforesaid contract agreements dated 30.08.11 and 06.03.13, it transpires that there were specific clause with regard to the Price Escalation/Variation with regard to all items excluding the non schedule items while in the agreement dated 20.01.10 that of the petitioner, the price variation is only mentioned with regard to Steel.

6. That it is humbly submitted that even if for the sake of argument, it is accepted that the price variation clause is applicable for all items in the contract dated 20.01.10 entered into between the petitioner and the Railway, the calculation of the same is a disputed fact and thus in view of the same and in view of the Arbitration clause contained in Clause 64 of the GCC, 2008, it is just and proper that the issue be decided in an Arbitration Proceedings.”

4. In the light of these facts and circumstances, the present petition stands disposed of, reserving liberty to the petitioner to invoke Arbitration Clause 64 of GCC, 2008. We are requesting the Arbitrator to complete the proceedings within a



reasonable period of time.

5. With the above observations, the present petition stands disposed of.

(P. B. Bajanthri, J)

(Jitendra Kumar, J)

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