

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.296 of 2017

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Muni Rai, Son of late A.N. Rai Resident of Mohalla 68, Chankyapuri, P.O.
B.V. College, P.S. Shastri Nagar, Patna-14.

... .. Petitioner/s

Versus

1. The Union Of India through General Manager, East Central Railways, Hajipur.
2. The Divisional Railway Manager Engg., East Central Railway, Danapur.
3. The Chief Engineer (Con), East Central Railway, Danapur.
4. The Sr. Divisional Engineer-2, East Central Railway, Danapur, Patna.
5. The Assistant Engineer in short AEN MKA , East Central Railway, Danapur, Patna.
6. The S E (W) MKA, Central Railway, Danapur, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Manish Sahay, Advocate Mr. Anil Kumar Sinha, Advocate Mr. Siddharth Aditya, Advocate
For the Respondent/s	:	Mr. Praveen Kumar Sinha, Sr. 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 : 21-04-2023

Heard learned counsels for the respective parties.

2. In the instant petition, petitioner has prayed for the following relief/reliefs:

“(I) For quashing of termination order of contract of the petitioner, issued under the signature of Sr. DEN (2) (i.e. Respondent No. 4) vide his letter nos. W-7/20/Misc/MKA/Open?



2008-09 Danapur dated 30-12-2015, as contained in Annexure-5 whereby and where under the said authority has been terminated the contract bearing its no. W-7/20/ Misc/MKA/Open/2008-09 dated 05-03-2009 of the petitioner in most arbitrary manner and having ulterior motive against the petitioner.

(II) For direction upon the concerned respondent to pay all lawful amount to the petitioner regarding work done amount as well as entire Security Deposit amount relates to said contract immediately alongwith interest @ 18 % per annum from the date of entitlement and till the date of its realization.

(III) For declaring that the order of termination 30-12-2015 as contained in Annexure-5 in totally arbitrary, malafidy, contrary to principle of natural justice and contrary to the provision of the agreement as well as bad in law.

(IV) For passing such an order or orders for which the petitioner is entitled under the law in the facts and circumstances of this case.”

3. Impugned order dated 30.12.2015 reads as under:

“East Central Railway

No:- W-7/20/Misc/MKA/Open/2008-09

Danapur dt. 30.12.2015

**To,
Munni Rai
68, Chanakaya Puri,
Raza Bazar, Patna-14.**

Reg:-Termination of the contract for Agrtt. No:- W-7/20/Misc/MKA/Open/2008-09 dt. 05.03.2009 for the work O/T for Earth in filling in formation, blanketing, extension of bridges, extension/construction of Low/High level platform, construction of sand hump, linking of track, linking of points and crossing and other ancillary work in connection with provision of loop and cross -overs at kaurata, Athmalgola and Mor stations on main line under AEN/MKA.

Dear Sir,



1. In terms of the condition of contract agreement No:- W-7/20/Misc/MKA/Open/2008-09 dt. 05.03.2009 governing the execution of the above work. It was required to be completed by the stipulated date of completion viz 10.05.2009 (extended DOC up to 31.03.2012). You have failed to complete the work by the agreed date of completion. You have also failed to apply for further extension of period of completion on valid and reasonable ground as acceptable to the Railway. Due to your failure to fulfill your contractual obligations, the contract stands terminated with effect from extended date of completion of the contract i.e. 31.03.2012.
2. Please note that for non fulfillment of the contract the Railway reserve the right to claim damages under clause 62 of General Condition of Contract in addition to any other right available to it under the law.
3. Final measurements of the work done by you shall be recorded on 15.01.2016. Please arrange to be present at site to witness and so sign the measurements. Failing which the work will be measured in your absence and such measurement as per provisions of the contract agreement shall not with standing such absence be binding upon you whether or not you shall have signed the measurement book.

Please acknowledge receipt.

Your's faithfully,
sd/-

30.12.2015

(Sumit Vats)

Sr DEN(2)/DNR

E. C. Riy., Danapur

For and on behalf of the president of India.

Copy to - AEN/MKA & SSE(W)/MKA & BKP for information and necessary action in this regard."

4. Perusal of the aforementioned impugned action, the petitioner has not been heard insofar as claiming damages under Clause 62 of the General Condition of Contract. In the absence of show cause notice and obtaining reply, the impugned civil action is in violation of Article 14 of the Constitution.

5. Accordingly, petitioner has made out a *prima facie* case so as to interfere with the with Annexure – 5 dated



30.12.2015 and it is set aside. Writ petition stands allowed reserving liberty to the concerned authority to proceed in accordance with law after due notice to the petitioner.

6. The above exercise shall be completed within a period of three months from the date of receipt of this order. The concerned authority is hereby directed to take note of judicial pronouncements like *UMC Technologies Pvt. Ltd. vs. Food Corporation of India and Another*, reported in (2021) 2 SCC 551 read with *Isolators and Isolators through its proprietor Mrs. Sandhya Mishra V. Madhya Pradesh Madhya Kshetra Vidyut Vitran Co. Ltd. and another*, 2023 LiveLaw (SC) 330. That apart, reading of number of judgments in respect of blacklisting, the following points were required to be examined by the concerned authority:-

“(i) The order of blacklisting involving civil consequences cast slur. Such an action can be taken only on the basis of objectives, satisfaction of the authority concerned. The fundamental of fair play required that the person concerned should be given an opportunity to present his case before he is put on blacklisting.

(ii) The order of blacklisting must specifically spell out the intention of blacklisting.



(iii) The order of blacklisting must be speaking order supported with reasons.

(iv) Blacklisting cannot be for an indefinite period and the period of blacklisting should be fixed based on doctrine of proportionality of the case.”

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

GAURAV S./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	27.04.2023
Transmission Date	NA

